

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MYRNA TURTURRO and DEPARTMENT OF ENERGY, OFFICE OF
SMALL & DISADVANTAGED BUSINESS UTILIZATION, Washington, DC

*Docket No. 01-719; Submitted on the Record;
Issued October 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on April 26, 2000 causally related to the employment injury of December 18, 1996.

On January 29, 1997 appellant, then a 49-year-old management information officer, filed a traumatic injury claim alleging that on December 18, 1996 she sustained a lower back injury while lifting a water bottle at work. The Office of Workers' Compensation Programs accepted the claim for subluxation of L4-5. Appellant stopped work on December 26, 1996 and returned to part-time light duty on March 3, 1997. She returned to full-time, full-duty work on April 1, 1997.

On October 20, 1997 appellant filed a notice of recurrence of disability alleging that on October 9, 1997 she awakened that morning with back pain that would not subside. On January 13, 1998 the Office accepted appellant's recurrence claim and appellant received appropriate compensation. Appellant returned shortly thereafter to regular-duty work.

On July 5, 2000 appellant filed various CA-7 claims for compensation for lost time from work from June 5 to August 11, 2000 related to the December 18, 1996 employment injury. She also submitted a CA-20 report dated June 21, 2000 from Dr. Charles Clegg, a chiropractor, who diagnosed lumbar strain/sprain, intervertebral disc syndrome and neuritis of sciatic nerve causally related to the employment injury. Dr. Clegg noted that prolonged sitting had aggravated appellant's condition. He further noted that appellant had been advised to limit her work week to three days per week beginning June 5, 2000 and continuing for at least eight weeks until further evaluation.

In a letter dated July 7, 2000, the Office requested medical rationale from Dr. Clegg as to why the work incident of December 18, 1996 still had an effect on appellant's current back condition and disability from work. In response, appellant submitted a narrative statement in which she explained how the alleged recurrence of disability occurred. She stated that she

experienced increased back pain in April 2000 due to a severe increase in workload which required a great deal of sitting and a business trip to Denver where she was required to do extensive walking on uneven stone floors and sitting on conference chairs. Appellant stated that the pain increased immensely and that her workload and symptoms did not subside until late May when Dr. Clegg reduced her work schedule to three days per week.

Appellant also submitted a letter from Dr. Clegg dated July 26, 2000 regarding her condition. Dr. Clegg provided his general opinion that any injury to a joint can cause recurring episodes of exacerbation and chronic aggravation and that any trauma or degenerative changes from the normal position of any vertebral motor unit could be considered a chiropractic subluxation. He then specifically stated that appellant had lower back weakness and instability due to her injuries on December 18, 1996 which caused her pain and was occasionally aggravated by increased work requiring prolonged sitting. Dr. Clegg related that in April 2000 appellant attended a work-related conference in Denver which required extended sitting and increased walking on stone floors which exacerbated her condition and resulted in acute lower back pain, radiating down the left leg, similar to symptoms associated with the work injury. He explained that due to this exacerbation and acute symptoms, he recommended that appellant decrease her work schedule to three days per week beginning June 5, 2000 and continuing for eight weeks, to give her back time to rest. Dr. Clegg stated that appellant would be reevaluated to resume her regular schedule. He further stated that he saw appellant on July 12 and 19, 2000 and she reported that since she had worked the reduced schedule, she had improved and her leg symptoms were gone. In the letter, Dr. Clegg indicated that regular chiropractic care greatly minimizes appellant's pain and allows her to continue working.

By letter dated August 11, 2000, the Office advised appellant that in order for it to accept the new diagnosed conditions of lumbar strain, neuritis of sciatic nerve and intervertebral disc syndrome, and the claimed disability beginning June 5, 2000, appellant must file a notice of recurrence of disability claim. The Office further advised that the evidence submitted from Dr. Clegg was insufficient and that appellant should provide a well-reasoned medical opinion based on objective findings as to how and whether her current diagnosed medical conditions were a result of the work injury of December 18, 1996.

On August 21, 2000 appellant filed a recurrence of disability claim alleging continuing pain in her lower back and left leg and aggravation of her sciatic nerve beginning on or about April 26, 2000 due to the December 18, 1996 employment injury. Appellant had intermittent periods of disability from her part-time position.

By decision dated November 3, 2000, the Office denied appellant's claim for recurrence finding that the evidence of record failed to establish that the claimed recurrence of April 26, 2000 and the claim disability from work commencing June 5, 2000 was causally related to the December 18, 1996 injury. The Office found that the factual information submitted by appellant and the medical evidence by Dr. Clegg supported that appellant actually sustained a new and separate occupational injury that occurred due to new work duties and activities at an April 2000 work conference in Denver.

The Board finds that the evidence establishes that appellant did not sustain a recurrence of disability on or about April 26, 2000 causally related to the December 18, 1996 employment

injury and further that employment-related residuals did not cause appellant to be disabled for full-time work commencing June 5, 2000.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.¹

The medical evidence currently on file fails to demonstrate that the claimed recurrence of April 26, 2000 and disability commencing June 5, 2000 was causally related to the accepted employment injury of December 18, 1996. Appellant's December 18, 1996 injury caused a subluxation at L4-5. Following chiropractic treatment she was found to have improved and she returned to full-time regular work sometime around April 1997 for approximately three years until she filed claims for intermittent periods of disability commencing June 5, 2000. In her subsequent recurrence of disability claim, appellant alleged that her condition on April 26, 2000 and resulting disability followed a period of increased prolonged sitting at work and extensive walking on uneven floors and sitting on uncomfortable conference chairs during an April 2000 conference in Denver. Her treating physician addressed this separate injury occurring in April 2000 based on his history of injury as noted in the July 26, 2000 medical report. Dr. Clegg indicated that appellant was treated intermittently from June 14 through October 24, 2000 following the April 2000 work activities for new conditions including lumbar strain/sprain, intervertebral disc syndrome and neuritis of sciatic nerve, which consequently required the reduced work schedule. This new incident represents intervening factors which might support a new occupational injury, not a recurrence of disability causally related to the December 18, 1996 accepted injury. Further, the medical evidence submitted in support of appellant's April 26, 2000 claim for recurrence of disability indicates that appellant's symptoms and disability was caused by conditions other than subluxation, which only had been accepted by the Office. Therefore, the evidence establishes that appellant's condition and disability from work commencing April 26, 2000 was not a consequence of the original lifting incident in 1996, but was caused by unrelated factors that might amount to a new and separate injury.

Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability on April 26, 2000 was causally related to the accepted December 18, 1996 subluxation.²

Accordingly, the Office of Workers' Compensation Programs' November 3, 2000 decision is hereby affirmed.

¹ *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1989); *Robert H. St. Onge*, 43 ECAB 169 (1992).

² With appellant's request for an appeal, appellant submitted additional medical evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

Dated, Washington, DC
October 19, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member